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ABSTRACT

The two principal federal funding streams available to states for provision of child care services are the Child Care and Development Fund (CCDF) and the Temporary Assistance for Needy Families (TANF) Block Grant structure. Noting that funds from both of these can be used for child care and early education initiatives, this report summarizes what is clear and what is unclear about the extent to which each could be used in support of universal pre-Kindergarten initiatives. The report separately analyzes each stream, summarizing the basic features, how it can be used, and the particular issues that would likely arise in efforts to use the funding in support of a universal pre-K initiative. Apart from legal issues, the report also considers potential political issues involved in using these funds for universal pre-K initiatives, and the fact that both streams are still pending reauthorization in 2003. (Contains 34 footnotes.) (Author/HTH)

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Financing Universal Pre-Kindergarten: Possibilities and Technical Issues for States in Using Funds Under the Child Care and Development Fund and Temporary Assistance for Needy Families Block Grant

By Mark Greenberg and Rachel Schumacher

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In recent years, states and localities have become increasingly interested in broadening the availability of early education programs. While some initiatives are principally focused on low-income or "at-risk" children, others seek to provide universal access to pre-Kindergarten (pre-K) early education programs for all children in a particular geographic area or across the state.

As a state designs an initiative, a key consideration concerns possible funding sources for the initiative. One important question is whether, and under what circumstances, a state might be able to use federal funding streams in support of the initiative. And, because federal funding streams sometimes have state matching or maintenance of effort (MOE) requirements, a related question concerns whether the expenditure of state or local funds under a pre-K initiative can count toward satisfying match or MOE funding.

The two principal federal funding streams available to states for the provision of child care services are the Child Care and Development Fund (CCDF) and the Temporary Assistance for Needy Families (TANF) Block Grant structure. While a number of smaller funding sources exist, CCDF provided states with $4.8 billion in federal funding in federal fiscal year 2002 (FY 2002) for child care services and initiatives to raise the quality of child care; TANF provided states with $16.5 billion, which can be used for a broad array of purposes, and of which approximately $3.6 billion was used for child care in FY 2001.

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Both CCDF and TANF funds can currently be used for child care and early education initiatives, though certain features of each funding stream either limit or raise questions about the potential use of the funding stream for a universal pre-K initiative. This report summarizes what is clear and what is unclear about the extent to which each of the funding streams could be used in support of universal pre-K initiatives. Key conclusions are:

- A state can use CCDF funds to pay the per-child costs for families that are eligible for CCDF child care subsidies, i.e. families with incomes below 85 percent of state median income (SMI), in which a parent is working or in education/training (or in which a child needs protective services), and in which the participating child meets the citizenship/alienage eligibility rules for CCDF. Some additional conditions affect the circumstances under which the funds can be used.

- A state may also be able to use CCDF funds to pay other costs for helping pre-K programs meet and maintain state standards, if those costs can be categorized as ones that improve the quality of child care.

- A state can use TANF funds for child care for low-income families, and may use such funds to pay costs for at least the low-income children in a pre-K program. However, there are unresolved questions about whether the costs for families in which the parent is not employed would be considered "TANF assistance" and thus subject to TANF time limits and other requirements. It is possible, though not clear, that a state might be able to pay pre-K costs for all participating children if the state reasonably concluded that the program could contribute to reduction of out-of-wedlock pregnancies.

- In any use of CCDF or TANF, a state will need to be mindful of the fact that funds are fixed, and that use of funds for higher-income families has the effect of shifting the funds away from services and benefits to lower-income families. In addition, both CCDF and TANF are pending reauthorization in 2003, and reauthorization decisions could affect a state's formal or practical ability to use these funds for pre-K initiatives.

The following text separately analyzes each funding stream, summarizing the basic features of the funding stream, how it can be used for child care/early education initiatives, and the particular issues that would likely arise in efforts to use the funding stream in support of a universal pre-K initiative. Apart from legal issues, there are also potential political issues involved in using these funds for universal pre-K. In addition, consideration must be given to the fact that both CCDF and TANF are still pending reauthorization in 2003; these considerations are briefly identified in a closing section.

I. CCDF and Pre-K Programs

This section initially summarizes the basic structure of CCDF, and then specifically discusses questions concerning use of federal CCDF and state matching and MOE funds for universal pre-K initiatives.

A. CCDF: The Basic Structure

CCDF is a principal source of federal funding for child care subsidies for low-income families and is the principal source of federal funding for initiatives to improve the quality of child care in states.[1] Each state qualifies to receive an amount of federal funds each year and can receive additional federal funds by spending state dollars for child care subsidies and quality initiatives. To receive CCDF funds, a state must have a designated lead agency and have a state plan approved by the U.S. Department of Health and Human Services (HHS).

While CCDF is often thought of as one program, it actually involves three separate funding streams of federal funds (and in some states, four) and additional state funds. The principal reason for the multiple funding streams is that the current structure of CCDF emerged in 1996 by combining several then-existing child care programs. In the resulting structure:

- Each state qualifies each year for a share of "discretionary" federal funds (i.e., funds subject to the annual Congressional appropriations process);

- Each state also qualifies for an amount of "mandatory" funds, representing the amount of funding that the state had been receiving from a set of federal child care programs in a base period;

- In addition, a state can elect to receive additional "matching" federal funds if the state meets a "maintenance of effort" requirement (mandating that the state continue the level of state funding that had existed in a base period) and if the state commits additional state funds to draw down the matching funds;

- In addition, a state can elect to transfer up to 30 percent of its TANF block grant funds to the CCDF program, in which case those funds are treated as CCDF discretionary funds and become subject to CCDF rules. (As discussed later, states may also choose to spend TANF funds directly on child care, in which case those services are not subject to any CCDF rules.)

For many purposes, the differences between the sources of funds don't matter, but some federal requirements only apply to a particular component or components of the CCDF funding structure.

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[1] Part I (A) is principally drawn from Greenberg, M., Schumacher, R., & Lombardi, J. (2000). *The Child Care and Development Fund: An Overview*. Washington, D.C.: Center for Law and Social Policy. More background detail on CCDF can be found in that publication.

Generally, most CCDF expenditures must be for "child care services" for eligible children; in addition, no less than 4 percent of expenditures must be for activities to improve the quality of care, and no more than 5 percent of funds may be used for administrative costs.[2]

Federal regulations define child care services as care given to an "eligible child" by an "eligible child care provider." Thus, in determining whether an expenditure can count as an allowable CCDF expenditure for child care services, it is important to know how an eligible child and an eligible child care provider are defined.

Under CCDF regulations, an eligible child must meet three requirements:

- **Age**: The child must be under 13 years of age; or, at the option of the lead agency, be under age 19 and physically or mentally incapable of caring for himself or herself, or under court supervision.

- **Financial Eligibility:** The child must reside with a family whose income does not exceed 85 percent of SMI for a family of the same size, with case-by-case exceptions for families receiving or needing to receive protective services and for children in foster care.

- **Parental Status:** The child must either a) reside with a parent who is working or attending a job training or educational program; or b) receive, or need to receive, protective services.[3]

In addition, a child must be a citizen or meet certain alienage requirements to be eligible under CCDF. The citizenship/alienage determination is made based on the status of the child, rather than that of the parent.

Under federal regulations, an eligible child care provider must be either:

- a center-based child care provider, group home child care provider, family child care provider, in-home child care provider of child care services for compensation that a) is licensed, regulated, or registered under applicable state or local law; and

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[2] More precisely, the law says that at least 70 percent of a state's mandatory and matching funds must be used to meet the child care needs of families who are receiving TANF assistance, are attempting through work activities to transition off TANF assistance, or are at risk of becoming dependent on TANF assistance. (As a practical matter, a state can define a very broad group of low-income families as falling within these categories.) In addition, the state must spend at least 4 percent of its CCDF funds (i.e. discretionary, mandatory, and federal, and state share of matching funds) on "quality" activities (discussed below), and may elect to spend more. And, no more than 5 percent of the funds expended (i.e., discretionary, mandatory, and federal and state share of matching funds) may be used for administrative activities. Of funds remaining, a state must spend a substantial portion to provide child care services to low-income working families and are required to give priority to children of families with very low family income (considering family size and children with special needs).

[3] 45 C.F.R. '98.20

b) satisfies state and local requirements, including health and safety requirements applicable to the child care services it provides; or

- a child care provider who is 18 years of age or older who provides child care services only to eligible children who are relatives and who complies with any applicable requirements that govern child care provided by the relative involved.[4]

Under CCDF, child care services may be provided through a mixture of grants and contracts to given providers and child care certificates (vouchers) given to eligible families. A state establishes payment rates to be paid to providers and must establish a sliding-fee scale to determine the share of the cost of care provided to eligible families. One key CCDF requirement affecting the provision of child care services is the "parental choice" requirement. The parental choice requirement says, in effect, that a state's CCDF requirements may not significantly restrict parental choice by:

- expressly or effectively excluding any category of care, type of provider, or any type of provider within a category of care; or

- having the effect of limiting parental access to or choice from among such categories of care or types of providers; or

- excluding a significant number of providers in any category of care or of any type of providers.[5]

As noted, in addition to expenditures for child care services, a state may also spend CCDF funds for activities to improve the child care quality. Such activities are not limited to expenditures that benefit children eligible for child care services under CCDF; they may be for activities that improve the quality of child care for all children. The law does not specifically list all allowable quality activities, but federal regulations do provide that these activities may include but are not limited to:

- Activities designed to provide comprehensive consumer education to parents and the public;

- Activities that increase parental choice; and

- Activities designed to improve the quality and availability of child care, including, but not limited to:

    - Operating directly or providing financial assistance to organizations (including private non-profit organizations, public organizations, and units of general purpose local government) for development, establishment, expansion, operation, and

[4] 45 C.F.R. '98.2.
[5] 45 C.F.R. '98.30.

coordination of resource and referral programs specifically related to child care;

- Making grants or providing loans to child care providers to assist such providers in meeting applicable state, local, and tribal child care standards, including applicable health and safety requirements;

- Improving the monitoring of compliance with, and enforcement of, applicable state, local, and tribal requirements;

- Providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first-aid, the recognition of communicable diseases, child abuse detection and prevention, and care of children with special needs;

- Improving salaries and other compensation (such as fringe benefits) for full- and part-time staff who provide child care services for which assistance is provided under this part; and

- Any other activities that are consistent with the intent of improving the quality and availability of care.[6]

B. Using CCDF Funds for Pre-K Initiatives: HHS Guidance

In issuing CCDF regulations in July 1998, HHS expressly explained that a state may count state expenditures for pre-K programs toward CCDF match and MOE expenditures under certain circumstances. This section explains what HHS has said; the subsequent section applies the guidance and identifies some unresolved questions.

In the regulations and preamble, HHS does not expressly define pre-K. However, HHS indicates that, subject to certain limits, pre-K expenditures may meet the requirements for allowable child care services expenditures for MOE and match purposes if they are for eligible families (i.e., children meeting age requirements, family income at or below 85 percent of SMI, parent in work or training, or child needing protective services) and if the pre-K program meets all of the following four conditions:

- Attendance in the pre-K program must not be mandatory.[7]

- The pre-K program must meet applicable standards of state, local or tribal law.

- The pre-K program must allow parental access.

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[6] 45 C.F.R. '98.51.

[7] HHS has stated that expenditures for compulsory state education services may not count toward MOE or match requirements. 63 Fed. Reg. 39964.

- The pre-K program must not be federally funded (unless funded with "exempt" federal funds for matching purposes),[8] and its state funding may not be used as basis for claiming other federal funding.[9]

In addition, HHS imposes a set of conditions and restrictions on the extent to which CCDF-related funds may be used for pre-K costs. Specifically:

- A state's expenditures for public pre-K can be eligible for federal match under CCDF if the state includes in its CCDF plan a description of the efforts it will undertake to ensure that pre-K programs meet the needs of working parents.[10]

- In addition, a state's expenditure for public pre-K programs may be used to meet the state's CCDF MOE requirement *if* the state has not reduced its expenditures for full-day/full-year child care services.[11]

- In any fiscal year, a state may use public pre-K funds for up to 20 percent of its MOE obligation and may use other public pre-K funds for up to 20 percent of the expenditures that are serving as the state's matching funds. However, if the state intends to use public pre-K funds for more than 10 percent of either its MOE or state matching funds in a fiscal year, the state must expressly so indicate in its CCDF state plan, and the plan must describe how the state will coordinate its pre-K and child care services to expand the availability of child care.[12]

The above provisions are worded somewhat oddly, since they say that pre-K funds can count toward up to 20 percent of a state's MOE and state match funds, but they do not expressly address the extent to which *federal* CCDF funds may be used to pay for pre-K costs. Since state expenditures are eligible for federal match, it would seem clear that federal expenditures must be allowable, but the wording of the regulations may raise questions as to whether they are allowable without a fiscal limitation, or are only allowable to the extent that they are matching allowable state expenditures. However, Child Care Bureau staff indicate that a state could use federal CCDF funds for pre-K initiatives without a 20 percent cap limitation, provided that the other noted eligibility requirements are met; at the same time, Child Care Bureau staff emphasize that a state needs to be mindful of meeting the needs of eligible younger and older children when making decisions about allocation of CCDF resources.

In the preamble to the CCDF regulations, HHS explains its rationale for imposing conditions and restrictions on the extent to which CCDF-related funds may be used:

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[8] This appears to be a reference to federal funds, which, by law, are allowed to match other federal funds. It appears to mean that a state cannot use other federal funds to match CCDF federal funds unless that is expressly allowable under the terms by which the other federal funds are made available.

[9] 64 Fed. Reg. 39965 (July 25, 1998).

[10] 45 C.F.R. '98.16(q); 45 C.F.R. '98.53(h)(2).

[11] 45 C.F.R. '98.53(h)(1).

[12] 45 C.F.R. '98.53(h)(3),(4).

> A chief concern to working parents is that many pre-K services are only part-day and/or part-year and such programs may not serve the family's real needs. Some have expressed concerns that an excessively broad approach to counting pre-K expenditures might result in a real reduction in full-day child care services to potentially eligible working families. The potential exists for a State with a sufficiently large pre-K program to divert all state funds away from other child care programs and fulfill its MOE and Matching requirements solely through pre-K expenditures. On the other hand, allowing pre-K expenditures to be counted toward MOE or match could provide a critical incentive for States to more closely link their pre-K and child care systems. This could result in a coordinated system that would better meet the needs of working families for full-day/full-year services that prepare children to enter school ready to learn. We struggled with these issues and considered various alternative approaches to counting pre-K expenditures in the CCDF.
>
> In the end, we decided on a policy that attempts to balance concerns about the use of pre-K expenditures in meeting CCDF requirements....[13]

HHS guidance also makes clear that when a pre-K program serves a broader group of children than those eligible for CCDF subsidies, the state may only count expenditures for those who are "eligible children" under CCDF, but the state may adopt a reasonable methodology for determining the share of costs that can be treated as CCDF-related. HHS explains:

> In the interest of easing administrative burdens on the Lead Agency, we have adopted the following policy toward calculating pre-K expenditures for purposes of claiming MOE and Matching funds. For pre-K expenditures to be claimed, States must ensure that children receiving pre- services meet the eligibility requirements established in the CCDF Plan. In cases where States do not have child specific information, however, they must develop a sound methodology for estimating the percentage of children served in the pre-program who are also CCDF-eligible. Expenditure claims must reflect these estimates.
>
> Although the methodology should be documented, we will not require that the methodology be submitted to ACF for prior review or approval. In documenting their methodology, Lead Agencies are reminded of the requirement at [45 C.F.R.] Sec. 98.67(c), which provides that fiscal control and accounting procedures must be sufficient to permit the tracing of funds to a level of expenditure adequate to establish that such funds have not been used in violation of the Act or regulations.[14]

C. Applying the Guidance in Using CCDF for Pre-K

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[13] 63 Fed. Reg. 39965-66. (July 24, 1998).
[14] 63 Fed. Reg. 39966.

The prior section explains that under HHS guidance, a state may use CCDF-related funds to pay for the part of pre-K expenditures that can be treated as "child care services" to "eligible children," subject to the limits noted in the section. Based on this guidance, a state or locality will likely have at least three broad questions:

1. Which children in a program can be paid for as "eligible children"?

2. What costs can be paid for eligible children?

3. Can CCDF-related funds be used for some costs for all participating children, including those who are not "eligible children"?

This section explores each of these questions.

1. Which children are eligible children?

In efforts to maximize the share of children in the pre-K program who are eligible children, the principal issues the state will face are the CCDF income, parental status and citizenship/alienage requirements. All children in a pre-K program will meet CCDF age requirements (i.e., they are under age 13), but not all children will have family incomes below 85 percent of SMI, will have a parent who is working or participating in education/training, or will meet citizenship/alienage requirements. In addition, these dimensions might not be ones that the program would otherwise wish to collect information about, if, for example, the program was being made available to all children without regard to parental income, work status, or child immigration status.

As noted above, HHS says that claims for expenditures need not be tied to services to individual children; rather, "a sound methodology for estimating the percentage of children served in the pre-K program who are also CCDF-eligible" is sufficient. It may be unclear, however, how states should read this language in connection with the CCDF data reporting requirements, since those requirements mandate the collection and reporting of detailed disaggregated data concerning all children receiving child care services under CCDF.[15] The preamble text makes it sound as if a reasonable estimating methodology should be sufficient, and Child Care Bureau staff indicate that when a state is using an estimating methodology, it will be assumed that the state cannot collect individualized case data. However, additional federal clarification would probably be helpful here.

It is also unclear how the general requirement for sliding fee scale contributions would apply in the context of a state's pre-K program. The basic CCDF requirement is that a state must require parental contributions under a sliding fee scale structure, though the state may waive these requirements for families in poverty and (on a case-by-case basis) for protective services and foster care children.[16] However, in the context of a pre-K program, a state might not wish to impose copayment requirements against families,

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[15] See 45 C.F.R. 98.71.

[16] 45 C.F.R 98.42; 45 C.F.R 98.20(a)(3)(ii).

and certainly would not likely want to only impose copayment requirements on lower-income participating families.

A family's income situation or a parent's work status might change over the course of a year. HHS guidance suggests that a state can probably structure its determinations of eligibility so that they occur once, at the beginning of the school year (or the point at which a child enters the program), and that payment can be made throughout the school year for a child who was an "eligible child" upon entering the program. HHS addressed closely related questions when discussing the issue of how a state should determine the length of a CCDF eligibility period in a collaboratively funded slot (i.e., one funded with Head Start, Early Head Start, or Pre-K programs) in ACYF-PIQ-CC-99-02 (February 8, 1999). The PIQ was issued in response to questions about whether the period of eligibility for children in collaboratively funded slots could be different from that of other CCDF-funded children, and whether CCDF eligibility, once determined, could be effective for a set period of time consistent with the Head Start, Early Head Start, or pre-K eligibility period, even if the family's circumstances change during that time. In response, the key language says:

> The Child Care and Development Block Grant Act (CCDBG) does not prescribe a specific eligibility period for families receiving CCDF-funded child care. Nor does the Act address the frequency of, or need for, redetermining eligibility once it is established.
>
> In the implementing regulations, ACF left the Lead Agency flexibility to establish its eligibility process. Hence, the Lead Agency may establish a different eligibility period for children in Head Start, Early Head Start or State pre-K/child care collaborative programs than generally applies to CCDF-funded children.
>
> While the Lead Agency has considerable flexibility in determining the CCDF eligibility period, such flexibility must be exercised on a rational basis with a programmatic reason for the period chosen. That is, the Lead Agency must be able to articulate the reason for the eligibility period(s) it chooses.
>
> The Lead Agency should articulate in section 4.1 of its CCDF State Plan the time period(s) for eligibility and a rationale for those periods. This is especially important where the Lead Agency establishes a different eligibility period for Head Start, Early Head Start or State pre-K/child care collaborative projects. For example, the Lead Agency could establish a general policy of ongoing, continuous eligibility with a redetermination every 6 months, but provide for a CCDF eligibility period of 2 years for children in Head Start, Early Head Start or State pre-K/child care collaborations.

The PIQ further notes that while a state has broad discretion in determining the length of the CCDF eligibility period(s), if the lead agency chooses to establish a different eligibility period in order to collaborate with Head Start, Early Head Start, or pre-K programs, a very careful assessment of the actual need for these services should be

conducted to ensure efficient use of CCDF funds. The assessment is to ensure that these services are being offered to parents who need them to support continued workforce participation. A lead agency's rationale for its eligibility period(s)—as stated in the CCDF state plan—should reflect these considerations.

Note that the PIQ does not expressly address what action a state should take if a family's income exceeds 85 percent of SMI during the eligibility period. As a practical matter, this is not likely to occur frequently. Moreover, since the state may elect to use a reasonable estimating methodology rather than tying claims to individual families, the state might just elect to allow a reasonable adjustment for instances in which family income might increase above the CCDF ceiling during the certification period. Also, since the PIQ says that the state may set a longer eligibility period for a collaboratively funded slot even if circumstances change during that time, a state would have a strong argument that eligibility could be fixed for that period even if income exceeded 85 percent of SMI. At the same time, HHS has also cautioned that in setting a longer period, the state needs to ensure that the state is making efficient use of CCDF funds and offering services to families who need the services to support continued workforce participation, which may suggest that the state may wish to review and reconsider a family's circumstances if there was a significant increase in income.

2. What costs may be paid for an eligible child?

It is clear that a state may pay for "child care services" with CCDF funds. It is possible that the per-child costs of a pre-K program might be significantly above the costs that a state normally pays to child care providers in the state's subsidy system. While this might (or might not) present political issues, there is no legal requirement that the payment rates paid in a state's contracts for child care services be set at the same or comparable levels to those paid through the state's voucher subsidy program. Although the mere fact of a disparity would not present a legal issue, a state would want to be attentive to the level of the rates paid to other providers: if rates paid to other providers are quite low, a parent or provider might allege that the rates being paid to non-pre-K providers were so low as to violate the "parental choice" requirements of CCDF (by resulting in effective lack of access to those providers).

While the federal law does not expressly define "child care services," HHS preamble guidance to the states has said:

> Under these regulations, States will have flexibility to define child care services, so long as those services meet the requirements of the statute. For example, State expenditures for child care for those populations previously served by the title IV-A or CCDBG child care programs would be eligible for Federal match. Similarly, State investments in child care through the use of State funds to expand Head Start programs or to otherwise enhance the quality or comprehensiveness of full-day/full-year child care would also be eligible for Federal Matching funds since these activities meet the goals of the Act.[17]

[17] 63 Fed. Reg. 39964.

Since this language makes clear that expenditures to expand Head Start programs can be considered child care services, it would seem to follow that expenditures for comprehensive services in a pre-K program should also be allowable under a state's discretion in defining child care services.

At least one other question may arise about using CCDF funds to pay for pre-K expenditures: use of funds to pay costs when other members of the public are not being charged for services. This issue may arise because states may wish to structure programs in which there is no charge to participating families. In the context of setting CCDF payment rates, HHS has said: "In setting or adjusting rates, we remind Lead Agencies of the general principle that Federal subsidy funds cannot pay more for services than is charged to the general public for the same service."[18] Presumably, this guidance is intended to describe situations very different from that involved in paying for a portion of a state's pre-K costs, though federal clarification would still be helpful here.

3. Can CCDF-related funds be used for some costs for all participating children?

Under HHS regulations, CCDF-related funds may not be used for "child care services" for children who are not "eligible children" under CCDF. However, CCDF-related funds can be used for "activities to improve the quality of child care," and such expenditures may benefit all children (i.e., they are not limited to ones that benefit CCDF-eligible children). The prior text (Section I[A]) lists the activities expressly identified by HHS as allowable activities to improve the quality of child care, but that list is not exclusive, so a state may identify others. In establishing or operating a pre-K program, some of the allowable activities that may be particularly relevant may include:

- Making grants or providing loans to child care providers to assist such providers in meeting applicable state, local, and tribal child care standards, including applicable health and safety requirements;

- Improving the monitoring of compliance with, and enforcement of, applicable state, local, and tribal requirements;

- Providing training and technical assistance in areas appropriate to the provision of child care services, such as training in health and safety, nutrition, first aid, the recognition of communicable diseases, child abuse detection and prevention, and care of children with special needs;

- Improving salaries and other compensation (such as fringe benefits) for full- and part-time staff who provide child care services for which assistance is provided under this part.

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[18] 63 Fed. Reg. 39959.

So, a state might use CCDF-related funds to help providers come into compliance with or maintain compliance with "standards." Those standards might include health and safety standards, curriculum, staff qualifications and training, and equipment and facilities. So, even though the state could not use CCDF-related funds to pay for the per-day costs of all children, the state could use those funds to provide direct help to programs that were participating in (or wished to participate in) a pre-K initiative.

The practical constraint here is that most CCDF funds must be used for child care services, and that even for activities to improve the quality of child care, the above activities are not the only activities that the state might wish to fund. Nevertheless, a key point to keep in mind is that a state could use CCDF funds to provide significant help to providers in reaching or maintaining the standards applicable to the state's pre-K program, and that such expenditures could benefit all participating children.

II. Temporary Assistance for Needy Families and Pre-K Initiatives

In the last several years, TANF funds have become increasingly important as a source of funding for child care initiatives. TANF funds may be used for a wide array of benefits and services, and as welfare caseloads have declined, TANF funds have increasingly been redirected to child care: in FY 2000, the amount of TANF funds redirected to child care was actually larger than the amount of federal CCDF child care funding available to states.[19]

TANF funds may be used under certain circumstances to help fund a state's pre-K initiative, though there are some key unresolved legal questions that could affect the practical usage of such funds. This section briefly summarizes key aspects of the TANF fiscal structure; explains how TANF funds might be used for pre-K programs and key questions that would arise in such an effort, and then highlights the potential effects of TANF reauthorization for such efforts.

A. TANF: Background

TANF was created by Congress in 1996, and replaced the former program of cash assistance for poor families, Aid to Families with Dependent Children (AFDC). AFDC was a federal-state match program. In contrast, under TANF, states receive a block grant of federal funds each year, and must meet an annual MOE requirement (i.e., a requirement to spend a specified amount of state funds for benefits and services that meet the purposes of TANF for low-income families). The block grant approximately reflects the amount of federal funding the state had been receiving under the AFDC program in the mid-1990s; the MOE requirement reflects 75 percent to 80 percent of the amount the state was spending in state funds under a set of programs repealed at the time TANF was enacted.

The language setting forth the purposes of TANF is important, because it affects allowable uses of TANF and MOE funds. The law says that the purpose of TANF is to increase the flexibility of states in operating a program designed to:

> (1) provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
>
> (2) end the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;
>
> (3) prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and

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[19] See Schumacher, R., Greenberg, M., and Duffy, J. (2001). *The Impact of TANF Funding on State Child Care Subsidy Programs*. Washington, D.C.: Center for Law and Social Policy.

(4) encourage the formation and maintenance of two-parent families.[20]

A state may use its TANF block grant funds in any of three ways.

- First, the state can transfer funds to other block grants. Up to a total of 30 percent of TANF funds can be transferred to CCDF and to the Social Services Block Grant (Title XX), provided that no more than 10 percent may be transferred to Title XX, and Title XX transfers must be for services to children and their families who are below 200 percent of poverty. When funds are transferred to another block grant, they become subject to the rules of that other block grant and are no longer subject to TANF rules.[21]

- Second, unless otherwise prohibited, a state may spend TANF funds in any manner reasonably calculated to accomplish the purposes of TANF.[22]

- Third, under a "grandfather clause," even if spending is not "reasonably calculated" to accomplish a TANF purpose, the state may, unless otherwise prohibited, spend TANF funds in any manner that the state was authorized to use the funds under a set of programs (AFDC, JOBS, Emergency Assistance, AFDC Child Care, Transitional Child Care, At-Risk Child Care) on September 30, 1995, or at state option, August 21, 1996.[23]

As a practical matter, the TANF grandfather clause only applies in some fairly limited circumstances (e.g., expenditures for foster care and juvenile justice). For most purposes, the questions a state faces involve whether to transfer funds, and if they are not transferred, whether an expenditure is reasonably calculated to accomplish a TANF purpose. Thus, the precise language of the purposes section (quoted above) becomes very important, and administrators will often discuss whether an expenditure might be allowable under a particular purpose.

Note that the first two purposes of TANF concern "needy families" and "needy parents," while the third and fourth purposes are not limited to needy families or needy parents; rather, they address more generally the goals of reducing out-of-wedlock pregnancies and promoting the formation and maintenance of two-parent families. States have broad discretion in defining "needy" families, but must use a definition based on family income. Thus, any expenditures justified under the first or second purposes of TANF must be for needy (low-income) families or parents (as defined by the state), while expenditures under the third or fourth purposes could be for members of the general population, rather than limited to members of low-income families.

For MOE funds, the rules are somewhat different. MOE expenditures must be made for members of needy (i.e., low-income) families, and must be reasonably

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[20] See also 45 C.F.R. '260.20.
[21] 42 U.S.C. '604(d).
[22] 42 U.S.C. '604(a)(1).
[23] 42 U.S.C. '604(a)(2).

calculated to accomplish a TANF purpose. Thus, MOE funds cannot be transferred to other block grants, and must accomplish a TANF purpose.

In using TANF and MOE funds, one key issue involves the distinction between spending for "assistance" and "nonassistance." In any discussion of possible use of TANF/MOE funds, a first question should be whether the expenditure is an allowable use of the funds; a second question should be whether, if allowable, the expenditure is considered "assistance" or "nonassistance." Even if the expenditure is allowable, the determination of whether the expenditure would be considered "assistance" may affect whether the state wishes to make the expenditure.

The definition of "assistance" matters because many TANF provisions (e.g., time limits, work requirements, child support cooperation requirements, data collection requirements) apply to the receipt of "TANF assistance." For example, the state may not use federal TANF funds to provide assistance to a family in which the adult head of household or spouse of the head of household has received federal TANF assistance for 60 months (subject to limited exceptions).[24] If a family including an adult or minor parent head of household receives TANF assistance (whether federally funded or state funded), the family is considered part of the state's caseload for purposes of TANF participation rate requirements.[25] A family receiving TANF assistance (whether federally funded or state funded) is required to assign its child support to the state.[26] And, a set of data reporting requirements apply to those receiving TANF assistance (whether federally funded or state funded).[27]

Generally, under HHS rules, two categories of benefits and services are considered "assistance." First, assistance includes "cash, payments, vouchers and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses)."[28] Second, assistance also includes supportive services such as transportation and child care provided to non-employed families, unless otherwise excluded.[29]

Under final regulations, a number of benefits and services are considered "nonassistance." If a benefit or service is considered nonassistance, then the TANF "assistance" requirements (e.g., time limits, work requirements, child support cooperation, disaggregated data collection) do not apply to it. For purposes of this discussion, the two categories of nonassistance that are particularly relevant are:

- support services such as child care and transportation provided to families who are employed; and

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[24] 42 U.S.C. '608(a)(7); 45 C.F.R. '264.1.
[25] 42 U.S.C. '607(b)(1)(B); 42 U.S.C. '607(b)(2)(B); 45 C.F.R. '261.22; 45 C.F.R. '261.24.
[26] 42 U.S.C. '608(a)(3).
[27] 42 U.S.C. '611; 45 C.F.R. Part 265.
[28] 45 C.F.R. '260.31(a).
[29] 45 C.F.R. '260.31(a)(3).

- nonrecurrent short-term benefits that are designed to deal with a specific crisis situation or episode of need; are not intended to meet recurrent or ongoing needs; *and* will not extend beyond four months.[30]

B. Using TANF for Pre-K: State Options and Unresolved Questions

If a state wishes to use TANF-related funds for pre-K programs, one option is to transfer up to 30 percent of a state's TANF grant to the state's CCDF program. Transferred funds will become fully subject to CCDF rules, and the transferred funds could be used for pre-K costs in accordance with the earlier discussion of use of CCDF for pre-K.

Alternatively (or, in addition), a state might wish to use TANF funds for a pre-K initiative directly, without transferring the funds to CCDF. If the state wishes to directly use TANF for pre-K, the state will have two principal choices:

1. The state can treat the pre-K costs as "child care." If the state does so, the state can use TANF funds to pay the costs for needy (low-income) families. The costs for employed families will be considered "nonassistance." However, the costs for nonemployed families will be considered "assistance," and the assistance-related requirements (e.g., time limits, work requirements, child support collection, data collection requirements) will apply.

2. Or, the state can assert that pre-K costs are for an early education program, and are not "child care." If the state so asserts, the state might wish to argue that costs for all families, whether or not low-income, can be paid, and that the costs should not be considered "assistance" for any family. Note, however, that the federal government has not expressly addressed whether this approach is permissible, so a state may be apprehensive about taking this approach.

The following text explains the two options, and issues concerning each option, in more detail.

First, it is clear that child care expenditures are considered an allowable expenditure of TANF funds; in fact, states spent about $1.5 billion in TANF funds for child care costs in FY 2000.[31] Child care for needy families is viewed as furthering either the first or second purposes of TANF, or both. Moreover, since there is no federal definition of "needy," the state may set its own reasonable definition, which might be set as high, or possibly even higher, than the CCDF income eligibility level. However, when TANF funds are directly used for child care, the portion of the costs that is for a nonemployed family (and which cannot be viewed as a nonrecurrent short-term benefit) must be treated as "assistance." In the context of a pre-K program, this may be seen as

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[30] For more detail on the assistance/nonassistance distinction and its significance, see Greenberg, M. & Savner, S. (1999). *The Final TANF Regulations: A Preliminary Analysis.* Washington, D.C.: Center for Law and Social Policy.

[31] See Schumacher, Greenberg, and Duffy.

impractical or undesirable. The state could probably argue that mere receipt of a slot in the pre-K program did not make the family subject to TANF time limits or work requirements,[32] but the family would clearly become subject to child support cooperation requirements, be considered part of the state's TANF caseload, and be subject to TANF's detailed data reporting requirements. Accordingly, a state might decide that it would prefer to limit the use of TANF funds in the pre-K program for low-income families in which the parent was employed (though, as noted, the state could extend funding to other low-income families if the state was willing to have the benefits treated as assistance to those families).

If a state wished to use TANF funds for all children in the program, rather than just low-income children, and the state wished to avoid the assistance/nonassistance difficulties, the state might try to assert that the expenditures in the pre-K program should not be viewed as child care, but rather should be considered "early education" program costs. A state taking this approach would need to identify a TANF purpose that would justify use of TANF funds for early education programs. One possible approach is to argue that there is evidence (from evaluations of the High Scope/Perry Preschool and the Abecardian Project) that high-quality early education programs are associated with subsequent reductions in the likelihood of out-of-wedlock births. Thus, the state could assert that expenditures for early education programs further the third purpose of TANF (i.e., reducing out-of-wedlock pregnancies), and are therefore allowable not just for needy families, but for all families. Moreover, the state would similarly argue that a program that is provided to all children without regard to parental work status should not be seen as a support service to parents, but rather as a program for children, and therefore not subject to the assistance/nonassistance distinctions HHS applies to child care.

While the arguments for this approach seem reasonable (to us), it should be emphasized that questions about this approach have periodically been posed to HHS, and HHS has never expressly addressed whether the approach is allowable. Accordingly, a state wishing to attempt this approach would necessarily be assuming some degree of risk that the federal government would assert that the state had misexpended TANF funds. A state might conclude that its risk of liability was not high in light of the lack of explicit federal guidance,[33] but it would be important for a state to fully understand potential risks before electing such an approach.

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[32] The state might argue that such families should not be subject to TANF time limits and work requirements because those requirements apply when an adult in the family receives assistance, and in this situation, the state could assert that only the child was being assisted.

[33] A state wishing to take this approach would both emphasize that HHS has indicated that where federal regulations are silent, a state will not be at risk of penalty if it is proceeding based on a reasonable interpretation of the statute. 64 Fed. Reg. 17841 (April 12, 1999). Moreover, the state might also point to the instructions originally accompanying federal financial reporting forms for states, in which states are advised that in listing child care expenses: "Do not include expenditures on pre-K activities or other programs designed to provide early childhood development or educational services (e.g., following the Head Start model); such activities should be reported as 'other' and identified as such in a footnote to that category in the 4th Quarter Financial Report." 64 Fed. Reg. 17917 (April 12, 1999).

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There are several different considerations affecting use of MOE funding for pre-K programs. First, as noted above, all MOE expenditures must be for members of needy families, so the state might set a high definition of "needy," but must limit its claimable expenses to families meeting the definition of needy. Second, if a state wishes to use MOE funds, the state may choose whether to blend those funds with TANF funds (in which case they become subject to TANF rules), or to spend the state funds in a "separate state program" that receives no TANF funds. If funds are used in a separate state program, then even if they would be considered "assistance," they are not subject to TANF time limits, work requirements, and child support cooperation requirements, because they are being used in a program that receives no TANF funding. However, HHS has said that the state must still meet TANF data collection requirements for families receiving assistance in a separate state program if the state hopes to qualify for TANF high performance bonus or for a favorable adjustment to the state's work participation rates.[34] Thus, even if the state was using the funds in a separate state program, the state might still wish to assert that they should be viewed as early education rather than child care expenditures to avoid these data collection requirements.

[34] 45 C.F.R. ' 265.3(d).

III. Political and Reauthorization Considerations Affecting Use of CCDF and TANF Funds for Pre-K Initiatives

The preceding sections have analyzed the technical issues that potentially arise in use of CCDF and TANF-related funds for pre-K initiatives. This section highlights two additional considerations: political considerations that may arise in light of the fixed block grant nature of both programs, and questions that may arise in light of the pending reauthorization of both programs in 2003.

Both CCDF and TANF involve fixed amounts of federal funds. TANF is a block grant; CCDF involves a combination of block grant and matching funds, though the matching amount is capped. As a result, for both funding streams, a state must make judgments about how to best use a fixed amount of money. Moreover, the broad intent of both funding streams is that they be used for services and benefits for low-income families, though, as indicated, there are circumstances in which the funds may be used for other families, too. Because the funding is fixed and broadly intended to be for low-income families, there will surely be disputes about any effort to use CCDF or TANF funds for universal initiatives. There are likely to be mixed views on the subject, since many advocates also believe that, in the long run, the highest quality services and benefits for low-income families may occur in the context of universal programs. If a state has unspent funds, a proposal to use them in the context of a universal program may be less controversial. However, if a proposal has the effect of shifting funding away from benefits for very low-income families and toward expenditures for much higher-income families, it will likely raise significant concerns within a state.

Second, both TANF and CCDF have pending reauthorizations scheduled for 2003. The Administration has proposed and the House has passed legislation that increases work requirements for TANF participants. No increases in TANF funding have been included in the Administration, House, or major Senate proposals for reauthorization. The House legislation contains a $1 billion increase in mandatory CCDF funding over a five-year period ($200 million per year); however, the Congressional Budget Office estimates that between $4.5 and $5 billion would be necessary just for states to be able to maintain current levels of child care services despite inflation over the five-year period. Given the current uncertainty, states are likely to be hesitant to make commitments to substantial new initiatives until the budgetary picture is clarified.

Although beyond the scope of this analysis, it bears mentioning that the federal Head Start program is also scheduled for reauthorization in 2003, and that the Administration has proposed an overhaul of the program that also make states hesitant to make decisions regarding pre-K while deliberations continue. The Administration proposal would allow state governors to apply for control of federal Head Start funds that currently flow directly from the federal to local program level, in exchange for submission of an integrated state plan for preschool that meets certain conditions. State plans would need to be approved by the U.S. Department of Education and HHS. Many details of the plan have not yet been formally announced, and many other proposals are likely to emerge from the Congressional reauthorization process.

Under the current scenario, it may be unlikely that the ability to make use of CCDF and/or TANF funds for pre-K would increase significantly. If funding stays flat or falls, it will be difficult to sustain current initiatives, and far more difficult to begin new ones. Accordingly, the decisions made during reauthorization are likely to be very important in any efforts to use CCDF and/or TANF funds in support of universal pre-K initiatives.

IV. Conclusion

It is clearly possible to use both CCDF and TANF funds to help pay for at least some of the costs associated with a state or local universal pre-K program. At the same time, there are some key areas in which additional federal clarification would be helpful, and some respects in which the rules of each program may impose complexities as states seek to use the CCDF and TANF funds. Moreover, so long as funding for both CCDF and TANF are limited, a state will need to make a set of political and policy judgments about prioritizing the use of the funds. Nevertheless, it is clear that both of these funding streams are at least potential sources of support for pre-K initiatives.

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